First FM Joint Ventures, LLC d/b/a Hampton Inn & Suites–Chicago River North *and* International Brotherhood of Teamsters, Local 727, AFL–CIO, Petitioner. Case 13–RC–20292

May 23, 2000

ORDER DENYING REVIEW

BY CHAIRMAN TRUESDALE, AND MEMBERS FOX, LIEBMAN, HURTGEN, AND BRAME

On March 27, 2000, International Brotherhood of Teamsters, Local 727, AFL–CIO (the Petitioner), filed a petition in the above-captioned case, seeking to represent all full-time and regular part-time door attendants and bell persons employed by Hampton Inn Suites Hotel (the Employer), excluding all office and clerical employees, guards and supervisors. On April 11, 2000, the Regional Director approved a Stipulated Election Agreement executed by the Employer and the Petitioner in a unit of all full-time and regular part-time bell persons employed by the Employer, excluding all office clerical employees, professional employees, guards, and supervisors. The stipulated unit includes four employees.

On April 11, 2000, the same day on which the Regional Director approved the Stipulated Election Agreement, the Petitioner filed a second petition in Case 13–RC–20300 in a unit of all full-time and part-time housekeeping, laundry, and hostess attendants employed by the Employer, excluding all office clerical employees, guards, and supervisors.

On April 12, 2000, the Employer requested permission from the Regional Director to withdraw from the Stipulated Election Agreement in the instant case. The Employer contended that it should be permitted to withdraw because a newly filed petition in Case 13–RC–20300 seeks an election in a unit of employees that share a community of interest with those already included in the stipulated unit. On April 21, 2000, the Regional Director denied the Employer's request, indicating that the Petitioner's second petition did not present unusual circumstances contemplated by the Board for withdrawal from a Stipulated Election Agreement.[1]

On April 28, 2000, the Employer sought review of the Regional Director's denial of its request to withdraw from the Stipulated Election Agreement. The Employer's request for review is denied.

In its request for review, the Employer reiterates the argument made to the Regional Director, namely, it should be permitted to withdraw from the Stipulated Election Agreement in the instant case because a newly filed petition in Case 13–RC–20300 seeks an election in a unit of employees that share a community of interest among those already included in the stipulated unit. It is well established that once an election agreement has been approved, a party may withdraw therefrom only upon an affirmative showing of unusual circumstances or by agreement of the parties. *Sunnyvale Medical Center,* 241 NLRB 1156 (1979); *Unifemme, Inc*., 226 NLRB 607 (1976). Although the Employer contends that the stipulated unit shares a community of interest with those employees whom Petitioner seeks to include in the second petition, it is the Board's practice to honor concessions made in the interest of expeditious handling of representation cases, even if the Board may have reached a different result upon litigation. *Highlands Regional Medical Center*, 327 NLRB 1049 (1999). Thus, the question as to whether the stipulated unit shares a sufficient community of interest with the employees sought in the second petition, or whether the Board would include or combine them in one unit upon litigation, are issues not relevant to determining whether the Stipulated Election Agreement should be enforced. *Highlands Regional Medical Center*, supra.

Our dissenting colleagues contend that unusual circumstances are present here because the Petitioner withheld a material fact, namely, it did not reveal its intent to file a second petition, and the Employer was unaware of this fact.[2] The dissent concedes that election agreements are contracts, binding on the parties who execute them, *T & L Leasing*, 318 NLRB 324 (1995), citing *Barceloneta Shoe Corp*., 171 NLRB 1333, 1334 (1968), but argues that we should not enforce this stipulation because the Petitioner allegedly withheld information regarding its plans to file a second petition. Initially, we know of no legal precedent requiring a labor organization to identify its organizing plans or forfeit an executed stipulated election agreement. Nor does the dissent cite any. Further, the Employer, who was represented by counsel during this proceeding, was not deprived of its right to raise any unit issues when negotiating the election agreement. The Employer's counsel knew, or at the very least should have known, that by stipulating to the appropriateness of the unit in this case, it was opening up the possibility that this Union or another union could organize and seek to represent employees in a unit comprising either part or all of its remaining employees. Nevertheless, the Employer decided, in the interest of expeditious handling of a representation case, to concede the appropriateness of the unit, and it is the Board's practice to honor that concession, even though the Board may have reached a dif-

[1] It is undisputed that on April 25, 2000, the Region held a hearing on the second petition and the Employer litigated its contention that the stipulated unit and the unit petitioned-for in the second case share a community of interest. Inasmuch as the petition in Case 13–RC–20300 is not before us, we make no finding as to that petition.

[2] Whether or not the Employer was aware of the Union's plans is irrelevant to us. The dissent also relies on the fact that the second petition was filed within hours of execution of the election agreement, which it contends qualifies as "unusual circumstances." We disagree. The mere fact that the Petitioner chose to file a second petition does not qualify as "unusual." Indeed, labor organizations frequently file petitions in different units, at various times after they have filed an initial petition. The time frame involved here does not alter our analysis.

ferent result upon litigation. *Highlands Regional Medical Center*, supra. The Board has long held that a stipulated unit will not be cast aside solely because it designates a unit we might find inappropriate had resolution of the issue not been agreed upon by the parties. *Otis Hospital,* 219 NLRB 164, 165 (1975); *The Leonard Hospital*, 220 NLRB 1042 (1975). Thus, even assuming that the stipulated unit is an inappropriate one, we will give full force and effect to that stipulation, provided that it does not contravene the provisions of the Act or established Board policy. Inasmuch as the Employer has not shown that the stipulated unit contravenes statutory or established Board policy, we shall hold the Employer to its stipulation.

MEMBERS HURTGEN AND BRAME, dissenting.

We would permit withdrawal from the stipulation or, at least, hold a hearing on certain matters discussed below.

On April 11, the Union and the Employer stipulated to an election in a unit of bell persons (four employees). Case 13–RC–20292. Within hours of this stipulation, the Union filed a second petition in a "wall to wall" unit (32 employees), excluding bell-persons.[1] Case 13–RC–20300. In the absence of a hearing, our colleagues assume arguendo that, at the time of the stipulation: (1) the Union knew that it would imminently file the second petition; and (2) the Employer did not know that fact.

Clearly, the aforementioned fact was a material one. If the Employer had known of the imminent second petition, the Employer would not have entered into the stipulation. This is because the stipulation undercuts the Employer's contention that the unit in Case 13–RC–20300 is inappropriate, i.e., that the appropriate unit must include employees in both of the cases. Indeed, by approving the stipulation, our colleagues effectively preclude a finding that the employees covered thereby are to be in the broader unit.

In our view, a stipulation is a contract between the parties, whereby the parties waive certain rights to a hearing under the Act. The contract is subject to the approval of the Board. We would not permit the contract to stand where, as here, a material fact has been withheld by one party and not known by the other party, to the detriment of the latter party. This "hide the ball" conduct is inconsistent with the Board's obligation to have an orderly and rational process for resolving unit issues. If the stipulation were set aside, the Board could order a consolidated hearing and could determine whether there should be one unit or two units or some other combination. By retaining the stipulation, the Board precludes that process.[2]

Our colleagues in the majority have misread our position. We do not say that a union must "identify is organizational plans or forfeit an executed stipulation agreement." Our position is much more narrow and precise. We are dealing only with the specific circumstances of this case, i.e., where a union fails to disclose its present intention to imminently file a second petition, which second petition is material to the decision of whether to stipulate as to a first petition. We need go no further than those precise facts.

Finally, we do not quarrel with the proposition that parties can stipulate to a unit that the Board, after litigation, would not have found appropriate. However, the problem here is with the process of obtaining the stipulation, not the fact that the stipulated unit may be inappropriate.

[1] The "wall to wall" language is that of the Employer. In the absence of a refutation or hearing, we cannot assume that the language is inaccurate.

[2] We recognize that any stipulated unit, by its nature, has a potential impact on the shape of future units. However, the instant case presents "unusual circumstances" because: (1) the petitions were within hours of each other; (2) the Union knew of the imminent petition and the Employer did not; and (3) these matters were material.